

**United States Department of Labor
Employees' Compensation Appeals Board**

R.U., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Shelby Township, MI, Employer**

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**Docket No. 16-0027
Issued: March 24, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 7, 2015 appellant filed a timely appeal from an August 31, 2015 merit decision and a September 22, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied a request for a prerecoupment hearing; (2) whether it properly found an overpayment of \$10,581.35 from September 24, 2011 to May 2, 2015 due to a failure to deduct life insurance premiums; (3) whether OWCP properly denied waiver of the overpayment; and (4) whether it properly found the overpayment would be recovered by deducting \$110.00 from continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 1, 2004 appellant, then a 49-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on March 26, 2004 he sustained injuries while in the performance of duty. He stated that he bent over to pick up a broom and felt pain in his low back radiating into his right leg. On June 16, 2004 OWCP accepted the claim for L4-5 herniated disc and right lumbar radiculopathy. Appellant stopped working and began receiving wage-loss compensation.

The record indicates that in September 2006 appellant returned to part-time work at the employing establishment for approximately four hours per day. Appellant filed a claim for compensation (Form CA-7) for the period October 14 to November 10, 2006. Commencing October 14, 2006, the wage-loss compensation payments were reported as WEC (wage-earning capacity) compensation,² but there were no deductions for life insurance or health benefits.

In a May 19, 2015 letter, the Office of Personnel Management (OPM) indicated that appellant was eligible to continue his life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI). OPM reported that OWCP should deduct for Code Z1, no reduction for postretirement life insurance. The commencement date was reported as September 22, 2012.

The record establishes that appellant had stopped working on August 18, 2011 and that the employing establishment had stopped making deductions for life insurance effective September 24, 2011.

OWCP calculated that for the period September 24, 2011 to May 2, 2015, it should have deducted \$761.98 for BLI and \$6,118.46 for OLI. With respect to PRBLI (Post Retirement Basic Life Insurance) from September 22, 2012 to May 2, 2015, the amount was \$3,700.91.

In a letter dated June 24, 2015, OWCP advised appellant of a preliminary determination that an overpayment of \$10,581.35 had been created due to its failure to deduct insurance premiums. The preliminary determination found that for the period September 24, 2011 to September 21, 2012, OWCP failed to deduct premiums for BLI or OLI premiums. For the period September 22, 2012 to May 2, 2015, no PRBLI deductions were made. As to fault, OWCP made a preliminary determination that appellant was not at fault in creating the overpayment. It enclosed a Form OWCP-20 and indicated that the form must be completed, with supporting financial documents, to properly consider the issue of waiver. Appellant was provided with appeal rights, including a right to request a prerecoupment hearing within 30 days.

By decision dated August 31, 2015, OWCP finalized the overpayment of \$10,581.35. It clarified that for the period September 24, 2011 to September 21, 2012 OWCP had failed to withhold premium deductions for BLI and OLI, and for the period September 22, 2012 to May 2, 2015 no PRBLI deductions had been made. OWCP found that the overpayment for OLI was \$6,118.46 for the period September 24, 2011 to May 2, 2015, \$761.98 for BLI the same period, and based on PRBLI premiums, an overpayment of \$3,700.91 had been created for the period September 22, 2012 to May 2, 2015. It found that appellant was not entitled to waiver as no

² There is no indication that OWCP issued a formal WEC decision.

financial information had been received. OWCP determined that the overpayment would be recovered by deducting \$110.00 from continuing compensation.

On September 8, 2015 OWCP received a request for a prerecoupment hearing. The request was postmarked August 31, 2015. By decision dated September 22, 2015, OWCP found the request was untimely as to the June 24, 2015 preliminary determination of overpayment, and, as such, the final overpayment decision was not subject to the provisions of 5 U.S.C. § 8124(b).

LEGAL PRECEDENT -- ISSUE 1

OWCP regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.³ The date of the request is determined by the postmark or other carrier's date marking.⁴ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁵ The only right to a review of a final overpayment decision is with the Board.⁶ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁷

ANALYSIS -- ISSUE 1

OWCP issued a preliminary overpayment determination dated June 24, 2015. Appellant was advised that he had 30 days to request a prerecoupment hearing. On September 8, 2015 OWCP received a request for a prerecoupment hearing postmarked August 31, 2015. The timeliness of the request for a prerecoupment hearing is determined by the postmark date or other carrier's marking.⁸ Since the request was made more than 30 days after June 24, 2015, the Board finds it is, therefore, untimely. Appellant therefore did not have a right to a prerecoupment hearing and OWCP properly denied the request.⁹

LEGAL PRECEDENT -- ISSUE 2

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.¹⁰ The coverage for basic life insurance is effective unless waived,¹¹ and premiums for basic and optional life coverage are withheld from the employee's pay.¹² Upon

³ 20 C.F.R. § 10.432.

⁴ *Id.* at §§ 10.439, 10.616(a); *see also C.R.*, Docket No. 15-0525 (issued July 20, 2015).

⁵ *Id.*; *see also Willie C. Howard*, 55 ECAB 564 (2004).

⁶ 20 C.F.R. § 10.440(b).

⁷ *Id.*

⁸ *See C.W.*, Docket No. 15-0554 (issued May 27, 2015); 20 C.F.R. §§ 10.439, 10.616(a).

⁹ *See J.J.*, Docket No. 13-1905 (issued April 8, 2014).

¹⁰ 5 U.S.C. § 8702(a).

¹¹ *Id.* at § 8702(b).

¹² *Id.* at § 8707.

retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹³ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹⁴ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.¹⁵

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his compensation, so that his life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹⁶

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.¹⁷ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of Optional insurance, is considered to have waived it and does not have that type of Optional insurance.¹⁸ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁹

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.²⁰

¹³ *Id.* at § 8706.

¹⁴ *Id.* at § 8707(b)(2).

¹⁵ *Id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that the claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

¹⁶ *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁷ 5 C.F.R. § 870.504(a)(1).

¹⁸ *Id.* at § 504(b).

¹⁹ 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

²⁰ *Id.* at § 8102(a).

When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.²¹

A final decision of OWCP shall contain findings of fact and a statement of reasons.²² With respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated.²³

ANALYSIS -- ISSUE 2

In the present case, OWCP declared an overpayment of \$10,581.35 for the period September 24, 2011 to May 2, 2015. It found that it had failed to properly deduct life insurance premiums during that period. The Board finds the case is not in posture for decision as OWCP has not made proper findings in this case.

The evidence with respect to life insurance consists of a letter dated May 19, 2015 from OPM reporting that there was an election of no reduction for postretirement life insurance at Code Z1. The commencement date was reported as September 22, 2012. As the Board has noted, OWCP must have sufficient evidence to document the election of postretirement life insurance and the date such insurance commences.²⁴ The election form to properly document the election of the specific postretirement life insurance options and the date of such election is not in the record.²⁵

The Board also notes that OWCP must provide a proper explanation as to how the amount of the overpayment was calculated.²⁶ The June 24, 2015 preliminary determination and the August 31, 2015 final decision find that for the period September 24, 2011 to September 22, 2012, an overpayment occurred because BLI and OLI deductions were not made. For the period September 22, 2012 to May 2, 2015, OWCP found no deductions were made for PRBLI. The overpayment amount, however, is described as resulting from the failure to deduct OLI and BLI for the period September 24, 2011 to May 2, 2015, as well as PRBLI from September 22, 2012 to May 2, 2015.

It is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions.²⁷ Its procedures provide that a preliminary notice of overpayment must clearly set forth the reason for the overpayment and a clearly written

²¹ *Id.* at § 8129(a).

²² *G.A.*, Docket No. 15-0095 (issued April 2, 2015); *O.R.*, 59 ECAB 432 (2008).

²³ *Id.*

²⁴ *M.T.*, Docket No. 15-0079 (issued January 28, 2016).

²⁵ *Id.*

²⁶ *L.D.*, Docket No. 15-1102 (issued January 20, 2016).

²⁷ *See Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

explanation as to how the overpayment was calculated.²⁸ In this case, OWCP should clearly explain its findings as to what type of life insurance coverage appellant had, for what periods, and the evidence on which such findings were made. The calculations as to the amount that should have been deducted should be explained, and the evidence supporting such calculations identified. The record contains no evidence as to how OWCP determined the life insurance premium amount that should have been deducted from continuing compensation.

The case will be remanded for proper findings as to the amount of an overpayment based on life insurance premium deductions. After such further development as is deemed necessary, OWCP should issue an appropriate decision. In view of the Board's decision, the issue of waiver and recovery will not be addressed at this time.

CONCLUSION

The Board finds that OWCP properly denied the request for a prerecoupment hearing as untimely. The Board further finds the case is not in posture for decision with respect to the overpayment of compensation and is remanded for further action by OWCP.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 31, 2015 is set aside and the case remanded for further action consistent with this decision of the Board. The decision dated September 22, 2015 is affirmed.

Issued: March 24, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

²⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).